Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	

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COMMENTS OF U S WEST, INC.

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SUMMARY

The 1996 Act establishes a statutory framework for the continuing development of competition within local exchange areas, areas that have traditionally been served by a single LEC.[1] The key element of this new competitive structure, and the subject of the instant docket, is the manner in which telecommunications carrier networks will interconnect with each other, particularly how they will interconnect with the incumbent LECs.

In these Comments, U S WEST, Inc. addresses this key issue from a dual perspective, as both an incumbent LEC and a new competitive entrant. U S WEST advocates interconnection principles that are fair and reasonable to both interests. By being so balanced, the proposed interconnection principles should serve to promote a competitive marketplace, rather than skew that marketplace in favor of a particular competitor or group of competitors.

The Commission should assume a leadership, rather than a coercive, role with respect to the initial implementation of the 1996. As contemplated by the Act, the interconnection process should primarily occur through good-faith business negotiations. While future Commission action may be required, either to address ongoing state regulation that poses an impediment to realization of the goals of the 1996 Act or to address some remaining contentious issues associated with the negotiation process, there is ample time for that kind of intervention. Except for

[1] All acronyms used in this Summary are fully identified in the main text.

extreme cases, Commission intervention need not form a part of the initial implementation of the 1996 Act.

Extreme cases are evidenced by state rules and regulations requiring local services (primarily residential service) be priced below the economic cost of providing the service, such as was recently ordered by the WUTC. Such requirements are absolutely inconsistent with competition and the 1996 Act and need to be addressed swiftly the Commission.

The Commission should focus on the economic implications raised by the 1996 Act. In this regard, U S WEST attaches an Affidavit by economists Robert Harris and Dennis Yao, detailing fundamental economic principles which must guide the Commission in this docket with respect to interconnection, network unbundling, resale and reciprocal compensation, among other matters. These esteemed economists outline the appropriate costing and pricing principles necessary to implement the 1996 Act in a lawful manner, such that LECs recover those costs to which they are entitled. These costing and pricing principles should promote full and fair competition, rather than advantaging one competitor over another.

Contrary to the reasoned approach of Harris and Yao, AT&T's advocacy as to the meaning and intent of the 1996 Act indicate that it seeks to utilize the Act as a means to depress, rather than promote competition, as it seeks to secure for itself a favored regulatory position. Professors Harris and Yao discuss at length the possibilities which AT&T's demands raise from an economic perspective and their adverse potential on the realization of full and fair competition in the local exchange market.

In establishing the appropriate economic framework under the Act, the Commission must recognize the differences, yet inextricable relationships, among the Act's different types of interconnection and their relationship to interstate access. Because of the clear threat of uneconomic pricing anomalies, unsustainable in a competitive environment, access and interconnection pricing must be harmonized, with some reform required almost immediately (e.g., CCL and RIC reformations to flat-rate charges, elimination of the ESP exemption).

Additionally, the Commission must construe the 1996 Act in such a manner that the differences between "technically feasible" and "technically possible" are acknowledged and given practical meaning. Technical feasibility carries with it an inherent economic component. Even if a particular type of unbundling is technically possible, it is still not technically feasible under the Act unless the interconnector is willing to pay all costs associated with the particular type of unbundling requested, plus costs represented by lost efficiencies incurred in offering the service/element on an unbundled basis.

While economic considerations should provide the touchstone for Commission analysis, that analysis cannot fairly proceed without an appreciation of the potential constitutional issues raised by the 1996 Act. The constitutional rights of incumbent LECs to be free from uncompensated governmental takings of their property and to receive equal protection under the law must be recognized and protected.

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COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby files its comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.[1] U S WEST comes to this proceeding with a point of view representing a wide spectrum of telecommunications service providers. U S WEST has subsidiaries simultaneously operating as incumbent local exchange carriers ("LEC"), potential facilities-based new entrants (through cable companies, for example), competitive access providers ("CAP"), and wireless providers.

U S WEST's interest in this proceeding is thus twofold: as a seller of interconnection services, in our role as an incumbent LEC; and, as a purchaser of interconnection services, as a competitive LEC and access provider. The approach to interconnection set forth in these Comments satisfies the interests of both seller and purchaser of interconnection services and facilities.

[1] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182, rel. Apr. 19, 1996 ("Notice"). These comments deal with all aspects of the rulemaking except for those set for separate comment (id. ¶ 290).

U S WEST's broad range of market products and geographies provides it with a particularly strong incentive to address the matter of interconnection and network unbundling with balance. And, as the remainder of these Comments demonstrate, it is a delicate balance.

I. FUNDAMENTAL PRINCIPLES THAT MUST GUIDE THE FEDERAL COMMUNICATIONS COMMISSION ("COMMISSION") IN ITS IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996

The instant Notice flows from the Telecommunications Act of 1996[2] and seeks to establish an environment in which competition in all aspects of telecommunications can develop and flourish. Based on positions already taken by various parties seeking interconnection under the terms of the 1996 Act, U S WEST can discern several interpretations of the Act which, if adopted by the Commission, could undermine not only the purpose and intent of the 1996 Act but also the vitality and viability of the existing American telecommunications infrastructure would be compromised.

The ramifications of these erroneous interpretations are so critical that U S WEST addresses them at the beginning of its Comments. While they have specific relevance to identified sections of the Notice, they are primarily of importance to the overall approach which the Commission must take. Further discussion of these matters also forms part of more specific comments throughout

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act" or "Act").

the remainder of this document. These issues are also discussed in detail in the analysis by Robert Harris and Dennis Yao, attached hereto as Exhibit A ("Harris and Yao Affidavit").

Harris and Yao, two of the nation's leading economists, analyze in depth various scenarios which could result from implementation of the 1996 Act. Of general consequence, they explain in detail how misguided interpretations of the Act in this proceeding (and parallel state proceedings) could actually operate to disrupt the nation's telecommunications infrastructure, retard investment in modern telecommunications facilities and services, and seriously impede competition by favoring a few existing large interexchange carriers ("IXC").

A. Role Of The Commission In Implementing The 1996 Act

1. The Commission Should Assume A Clear Leadership Role Notice Section II.A.

A key issue repeatedly referenced in the Notice is the role of the Commission in implementing the 1996 Act.[3] According to the Notice, the Commission foresees a plenary role, establishing detailed interconnection rules and pricing standards. That role, however, is inconsistent with the intent of the 1996 Act. A more moderate role is appropriate.

Leadership, not regulatory prescription, is what is really required of the Commission. The Commission should confine itself to material interpretations of

[3] See, e.g., Notice ¶¶ 38-41.

the 1996 Act and the establishment of minimum interconnection and unbundling standards to facilitate interconnection negotiations. As contemplated by the Act, the industry then should be permitted, in the first instance, to negotiate the proper interconnection agreements pursuant to appropriate state oversight. There is ample time for the exercise of more coercive federal authority, should such be necessary.

Initially, the Commission should regulate with a targeted goal, i.e., that of ensuring an orderly transition to full and fair competition. Essentially, the Commission should regulate only to the extent necessary to ensure that the pro-competitive goals of the Act are not thwarted. Detailed federal rules and regulations are not initially necessary to assure that that goal occurs, in either the federal or state jurisdictions.

At the federal level, what is required are several intermediate actions in the area of access charge reform. Additionally, states need some direction and guidance from the Commission with respect to general federal interconnection principles. Overall guiding principles are a very important part of developing a competitive environment neutral to the outcomes of the competitors, yet cognizant of the various advantages and disadvantages of each group of competitors.[4] In crafting such principles, the Commission must recognize the impact of any action it takes on all LEC customers, not just interconnectors, as well as on the shareholders of all

[4] These advantages and disadvantages are discussed in the attached Harris and Yao Affidavit.

telecommunications suppliers.[5] The Commission's establishment of broad interconnection and unbundling guidelines, with an immediate re-focusing of Commission energies to matters of access pricing rules and universal service fund matters, is the best federal strategy for achieving the overall, wide-ranging goals of the 1996 Act.

States do not need dictated interconnection points, network elements or pricing standards.[6] Competition will evolve fairly if the Commission avoids overly intrusive tinkering and the states do not create a competitive landscape which favors one competitor over another.

2. Detailed Commission Rules Result In Added Responsibilities Notice Section II.B.2.

While U S WEST above outlines an appropriate federal role with respect to statutory implementation, the Notice (as discussed above) suggests more in the way of federal intervention. It proposes detailed specifications for interconnection and, more significantly, pricing, leaving very little to actual negotiation. If the Commission adopts interconnection rules and standards at the level of detail proposed in the Notice, it must move immediately to address the myriad of contradictory state and federal pricing and interconnection rules currently in

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[5] The guidelines must, of course, recognize other aspects of the legislation such as the fact that CMRS providers are not LECs. As such, they are not subject to the Section 251(b) interconnection requirements. See Notice ¶ 195.

[6] In some areas, anti-competitive state actions will require immediate corrective action by the Commission. See discussion of the State of Washington Utilities and Transportation Commission ("WUTC") Order at Exhibit B.

existence. To do justice to such an undertaking would be a time-consuming process.[7]

The scope of the Commission's role is particularly important in the area of the pricing and costing of interconnection. In the short term, Section 251 interconnection will be entirely intrastate in nature, while interstate carrier connections will be purchased out of the interstate access tariffs.[8] Thus, the Commission's costing and pricing rules could have a profound effect on the pricing and costing of all other LEC state services.

If the Commission chooses to regulate what are essentially intrastate interconnection prices, it has a concomitant duty to ensure that interstate access pricing is aligned with the Commission's interconnection pricing approach, as well as to ensure that the states apply the same pricing/costing methodology. Otherwise, conflicting or inconsistent pricing and costing methodologies dictated by the Commission and state regulators could create an economic nightmare.[9] As discussed below, immediate access reform is an area where the Commission can assume leadership, setting the appropriate urgent tone with respect to the interplay of access and interconnection pricing.

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[7] Had Congress intended such a role for the Commission, surely a longer implementation deadline would have been established.

[8] See discussion below.

[9] See Notice ¶ 152.

3. Preemptive Role In Preventing Impediments To Competition Notice Sections II.A., B.2., C.5.

No matter how the Commission chooses to exercise its authority over interconnection and unbundling, it must implement rules to ensure that state regulations do not undermine either the 1996 Act or the Commission's rules. There is a critical and very real danger that various regulatory commissions will attempt to transfer costs from local retail ratepayers to interconnectors (and *vice versa*) in a manner that both materially impedes competition and unlawfully deprives incumbent LECs of the opportunity to recover their investment.

A key example of a state regulatory action that fits within this category is subsidized residential rates. As the Commission concedes,[10] in many states revenues from other services subsidize residential rates. U S WEST's analysis shows that the Total Service Long-Run Incremental Cost ("TSLRIC") of providing local residential service is approximately $25 per month per line. Yet, states are often resistant to increasing residential rates to cover these costs.

The Commission has a statutory mandate to take action in those specific cases in where a state is insistent upon regulating in a manner inconsistent with the Act.[11] Examples of the kind of state actions that might prompt a preemption

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[10] See id. ¶¶ 184-88.

[11] See 1996 Act, 110 Stat. at 70-71 (§ 253(d)).

inquiry as inconsistent with the Act are briefly described below. A clearly anti-competitive state Order (by the WUTC is described in Exhibit B.[12]

- Subsidies to maintain below-cost residential rates must be eliminated. Competitors will not be able to enter the local residential service market if incumbent LEC prices are below the cost of service. If the Commission promulgates detailed interconnection regulations, it must also adopt rules requiring state regulators to set residential rates at a reasonable, above cost, non-subsidized price.

  Such preemptive rules should establish costing and pricing principles which include:

  - Fixed or non-traffic-sensitive costs may not be assigned to traffic-sensitive prices. Such allocations have had pernicious effects in other regulated industries and will have such impact in telecommunications as well, because they violate fundamental economic principles. See Harris and Yao Affidavit at 19.

  - All prices must be set at a level to recover TSLRIC plus all appropriate costs necessary to operate the business and recover investment. Commission Rules must prohibit pricing below this level or pricing simply at TSLRIC.

  - Absent a firm's voluntary acquiescence in the use of hypothetical proxy costs (such as with the U S WEST's proposed Benchmark Cost Model ("BCM") which would target high-cost funding to truly high-cost geographic census blocks while avoiding the need to do cost studies on the roughly 22,000 such census blocks nationwide), State cost determinations must use actual company costs and set prices to recover those costs, not "fantasy costs." See Exhibit B.

  - Cost determinations by State regulators must use economic lives for capital recovery purposes, in order that all competitors in the local market are able to set prices using equal depreciation lives and methodologies.

[12] Exhibit B contains the WUTC Order. That Order is cited to in the Notice at n.251.

- Subsidized local residential rates further impede competition by making it impossible to establish intelligent "wholesale" rates for resellers. The 1996 Act requires incumbent LECs to offer retail services to resellers at a wholesale price, defined as retail price less avoided marketing costs.[13] Because of subsidization of residential rates, it is predictable that wholesale costs will exceed the retail price. As a result, the wholesale price will be higher than the retail price. Indeed, it would have to be higher to avoid a confiscatory rate.

- State imputations of revenues and costs from non-carrier activities (e.g., Directory Advertising) are anti-competitive. When an incumbent LEC is required to reflect millions of imputed revenues from another service in another company on its own books, based on what a regulator thinks the other service might have earned,[14] the incumbent LEC's prices are artificially reduced.

- State interconnection tariff rules are not consistent with the 1996 Act, especially those that prohibit Section 251(c) negotiations.[15]

- State entry and exit regulations, carrier-of-last-resort duties[16] and ready-to-serve obligations cannot be maintained consistent with the new Act, as competition develops.

Although separation of state and federal authority in the telecommunications field is complex, if competition is to develop pursuant to the 1996 Act, many residential rates must be increased quickly to a proper economic level. This action will ultimately lower overall prices by permitting proper economic signals to be sent to the marketplace but will, nevertheless, be controversial.

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[13] See Notice ¶¶ 172-83.

[14] See Washington Utilities and Transportation Commission v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order, dated Apr. 11, 1996, at Part Four, Section II.B.

[15] See Order Denying Applications for Reconsideration of Order No. 96-021, Docket No. CP1, CP14 and CP15, Public Utility Commission of Oregon, May 7, 1996.

[16] Carrier-of-last-resort obligations must be dealt with exclusively pursuant to the universal service fund provisions of the Act.

4. Jurisdiction Of Interconnection

One final jurisdictional problem is raised by the Notice. It proposes to treat interconnection as a non-jurisdictional or omni-jurisdictional service/facility.[17] Whereas telecommunications carriers now split investments, costs, and revenues into interstate and intrastate components, the Notice proposes an omni-jurisdictional environment, with interconnection straddling both jurisdictions. While such an approach may be workable in the future, currently there are problems that militate against adopting this approach in the instant docket.

For example, new separations and accounting rules are a necessary predicate to such an approach. And, the impact on other costing mechanisms would need to be studied as well. In addition, all state interconnection rules, including state tariff requirements, would need to be addressed, perhaps preempted, because interconnection would now include an unseverable interstate component. Access reform and universal service fund (including high-cost fund) implementation are likewise issues which require resolution.

The matter of creating a new class of omni-jurisdictional services and facilities is extremely complex. The approach suggested by the Notice deserves further study. Because all Section 251 interconnection will initially be intrastate, in light of the continued vitality of the Commission's Part 69 Rules,[18] the Commission need not address this issue now. Rather, a more appropriate time to

[17] See Notice ¶¶ 37-40.

[18] See 1996 Act, 110 Stat. at 65 (§ 251(g)).

consider creating this omni-jurisdictional class of service is within the context of the later access reform docket.

B. The Commission Must Recognize The Distinctions Among Types Of Interconnection Covered By The 1996 Act Notice Sections II.B.2., C., G.

The 1996 Act envisions four different types of carrier-provided interconnection. Each type invokes different language to govern the pricing practices of incumbent LECs. The Notice clearly recognizes the potential overlap associated with these four types of interconnection.[19]

In the long run, the potential for overlap may prove intolerable.[20] With respect to the Commission's initial implementation of the statutory interconnection rules, however, it is possible to distinguish among these four different types of interconnection. Interstate access is included in this discussion as well.

- Interconnection (Section 251(c)(1)). Interconnection under the Act entails the facilities involved in interconnecting two carriers' networks. It is entirely a facilities-based concept. Interconnection costs consist primarily of costs entailed in establishing the appropriate interface between the two networks.

- Network Elements (Sections 251(c)(2) and 252(d)(1)). Network elements are those switching and transport components and services purchased by a carrier to augment its own network and necessary to serve the purchasing carrier's own customers.

- Transport and Termination (Sections 251(b) and 252(d)(2)). Call termination refers to last-mile terminating services provided by a carrier to connect a customer of another network to a customer of the terminating carrier (from the last end office to the end user).

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[19] Notice ¶¶ 117-57, 172-88, 226-44.

[20] See Section VII below dealing with pricing anomalies.

As the Commission recognizes,[21] call termination is where the real potential local exchange "bottleneck" lies for all carriers. This is because the carrier controlling terminating services to a customer will, in the near term, control the access of all other carriers and users to that customer. Transport, on the other hand, is transport between offices and already has a number of substitutes.

- Resale (Sections 251(c)(4) and (252(d)(3)). The resale requirements are essentially pricing rules that restate the long-standing federal right to resell carrier services, but add the requirement of wholesale pricing. As a general proposition, all LEC retail services must be available for resale (with limited exceptions). However, the statute's resale language does not create a right to substitute resold local exchange services for interconnection or other tariffed services.

- Interstate Access. Interstate access is the tariffed service by which interstate carriers purchase the ability to originate and terminate interstate calls on LEC networks. Until the Commission expressly supersedes its Part 69 interstate access rules,[22] any interstate call originated or terminated by a LEC for another carrier must pay interstate access carrier charges.

Although the statutory classifications are sufficiently distinct to permit interconnection to be implemented quickly, they are also sufficiently artificial that the different classes could become largely interchangeable. Because pricing anomalies are foreign to the concept of a competitive market, the Commission's rules should not create pricing incentives to substitute (or arbitrage) one type of classification for another.

In a competitive market, pricing anomalies cannot be sustained. For example, pricing the same or similar services (or services with similar cost characteristics) at different levels depending on the use the customer makes of the

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[21] Notice ¶ 230.

[22] 1996 Act, 110 Stat. at 65 (§ 251(g)).

service is unsustainable in a competitive market. The Commission itself has repeatedly recognized this basic economic fact. Given that resale operates to eliminate price anomalies,[23] the creation of new pricing anomalies in the resale environment contemplated by the Act would be arbitrary, particularly if a resale below-cost scenario is created due to the mandatory resale language of the Act coupled with state commission actions which set retail rates below costs. In the long run, the pricing and costing principles which govern all types of interconnection will need to be harmonized to eliminate material pricing anomalies.[24]

A fairly simple example of how pricing anomalies could arise under the Act is illustrative. A LEC's DS1 service can be viewed variously as interstate or intrastate special access, a network element, the local transport element of switched access, or transport for termination of calls. The price of a DS1 should be the same no matter what use the customer makes of that particular service. A rule emanating from this proceeding which created new pricing categories of DS1 service would be presumptively unreasonable.

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[23] The Commission has found that resale inhibits price discrimination (see In the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, Report and Order, 83 FCC 2d 167, 174-75 ¶¶ 15-17 (1980)), and that resale by itself drives prices towards costs by making arbitrage possible (see In the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, Report and Order, 60 FCC 2d 261, 299 ¶ 76 (1976)).

[24] As discussed below, many of the demands of parties, such as AT&T, will discourage the construction of modern telecommunications facilities. Ironically, pricing anomalies encourage uneconomical construction as competitors build to take advantage of subsidizing services priced well in excess of cost.

C. The Commission Must Beware Of Half Measures
Notice Section II.B.2., G.

The instant Notice is unique in the magnitude of what it proposes not to address. For example, the Commission recognizes the importance of access charge reform in the very near future,[25] but sets no timetable for action. Similarly, the Commission recognizes the potential interchangeability of tariffed access services, interconnection functions and facilities purchased under the 1996 Act,[26] and among different types of interconnection, yet proposes to deal with this issue by regulating the use to which certain services/functions/facilities can be put.[27]

The Commission envisions that interconnection provided under the 1996 Act will not fit within the traditional federal-state regulatory regime,[28] yet it proposes very little in terms of harmonizing this position with state regulation of intrastate carrier access and other local exchange services. Moreover, while the Commission posits that interconnection will be a non-jurisdictional service/facility, no provision is made to deal with the critical separations and other similar issues which the new omni-jurisdictional interconnection regime would raise.

If the 1996 Act is either read or implemented wrongly, there are many opportunities to create serious economic and market damage to the existing

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[25] Notice ¶¶ 3, 145-46.

[26] Id. ¶¶ 3, 146.

[27] Id. ¶ 153.

[28] Id. ¶¶ 37, 50, 61, 67, 119-20.

telecommunications infrastructure, as well as to potential new entrants. In implementing the 1996 Act, the Commission must recognize the effects and implications of its actions on the entire industry, as well as on existing federal and state regulatory structures. Accordingly, the Commission should not implement the statute on a piecemeal basis.

In short, the Commission should not treat interconnection in a vacuum. Instead, it must fashion its interconnection rules as part of an integrated telecommunications policy, intrastate as well as interstate. Key areas that must be considered in tandem with the interconnection rules under consideration in this docket, albeit in separate proceedings, include:

- Access charge reform (at a minimum, Carrier Common Line ("CCL"), Residual Interconnection Charge ("RIC"), Enhanced Service Provider ("ESP") exemption and an appropriate transitional plan);
- Separations;
- Interrelationships between interconnection and access -- interstate as well as intrastate;
- Intrastate rules governing end user/retail pricing;
- Entry/Exit regulation;
- Increased pricing and other operational flexibility for LECs; and
- Universal Service/High-Cost Fund timing compared to interconnection.

And, the above list is by no means all inclusive.

It is not U S WEST's point here to argue that the instant docket is the appropriate forum in which to modify the rules in all of the areas identified above. However, this docket cannot proceed successfully without recognizing the material and probably irrevocable effect the Commission's interconnection and unbundling policies and rules will have with regard to the above areas. Accordingly, prompt attention and expeditious action must be given to reform in these areas.

D. The 1996 Act Must Be Implemented In A Manner That Favors Competition, Not Individual Competitors Notice Section II.B.2., 3.

In the Notice, the Commission considers incumbent LECs' low-cost services as a temporary mechanism for new entrants to commence quickly the offering of exchange services.[29] It is apparently anticipated that later facilities-based competition will be realized once new entrants have established a customer base.[30] The Commission's position appears to be that true competition can be facilitated through assimilation of low-priced LEC services -- primarily network elements and resold services.[31]

Harris and Yao state this fundamental proposition succinctly:

> As a matter of first principle, then, the Commission's rules should promote allocative, technical and dynamic efficiency. At all costs, the Commission should avoid policies that may create the appearance of competition -- e.g., by increasing the number of competitors in local exchange services -- but which, in the long run,

[29] Id. ¶¶ 8, 134.

[30] Id. ¶¶ 6, 75.

[31] Id. ¶¶ 10, 12-13.

actually inhibit real competition by creating conditions that ensure the success of a few large firms at the expense of many other potential competitors. Given the history of this industry, it is especially important the Commission's rules do not recreate an industry in which one firm, such as AT&T, is allowed to dominate the marketplace. Yet, if the Commission were to adopt the policies advocated by AT&T, that would surely be the result. For example, if the Commission mandates incumbents to set the wholesale price of local exchange service below its full economic cost, as AT&T proposes, it runs the very real risk of creating an environment in which AT&T will dominate local exchange markets. Instead, the Commission should pay careful attention to the likely effects of its rules on the structure of future local exchange and other telecommunications markets, as these markets will be powerfully influenced by the results of this proceeding. It is critically important that the FCC's rules not distort competitive dynamics by favoring one class of competitor or one type of technology over others.[32]

It may be true, at least for the immediate future, that access to LECs' loops and switching services is an important component of evolving competition. However, policies (or rules) that mandate making these LEC facilities and services available at prices which do not reflect the true economic costs of the incumbent LECs and are not economically reasonable do nothing to advance real competition. Rather, such rules harm the public interest by severely compromising the continued economic viability of the existing telecommunications infrastructure and skew the market by artificially favoring certain groups of competitors over others. Once put in place, it will be very difficult to alter an uneconomic regulatory and market structure, as the Commission has discovered with its ESP exemption and interim local transport rules.

[32] Harris and Yao Affidavit at 2.

The attached Harris and Yao Affidavit evidences how a pricing structure that relies on uneconomic pricing of incumbent LEC services (i.e., network elements and wholesale services) would be destructive and anti-competitive. The Harris and Yao Affidavit also demonstrates that an irrational economic approach to the pricing of network elements and wholesale services would actually inhibit the development and deployment of new and advanced facilities and technologies.[33] This inhibition would be in direct conflict with other provisions of the 1996 Act which require the Commission to encourage and foster technological development.[34]

The Commission should exercise its authority under the 1996 Act to establish what the Harris and Yao Affidavit describes as "the minimal set of rules necessary to ensure nondiscriminatory interconnection to the public switched network."[35] The Commission's rules reasonably should include provisions for access to unbundled LEC loops and switching and provisions for termination of calls by all LECs, all at prices reflecting true economic costs.[36]

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[33] Harris and Yao Affidavit at 22-25, 35-37.

[34] Sections 254(b)(2) ("Access to advanced telecommunications and information services should be provided in all regions of the Nation."), (3) ("Consumers in all regions of the Nation . . . should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services,"), (6) (schools and health care providers should have "access to advanced telecommunications services"), (h)(2) (the Commission should establish rules "to enhance . . . access to advanced telecommunications and information services"); Section 706(a) (regulatory commissions "shall encourage the deployment . . . of advanced telecommunications capability to all Americans). 1996 Act, 110 Stat. at 72, 74, 153 (§§ 254(b) & (h), 706(a)).

[35] Harris and Yao Affidavit at 3.

[36] Call termination is the only interconnection that is essential to facilities-based carrier entry into the local exchange market. And, it might remain essential even